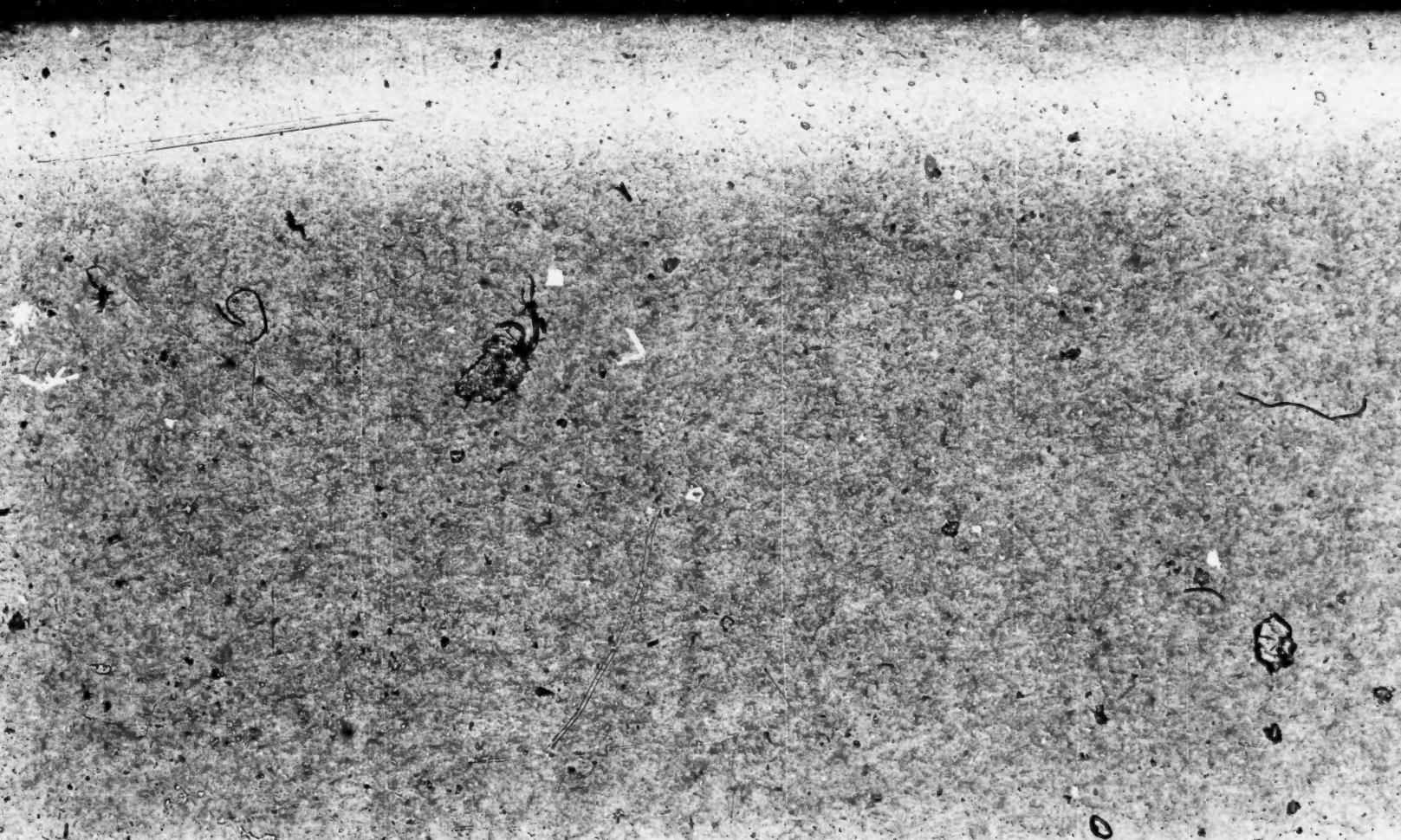

IN THE

Supreme Court of the United States

October Term, 1958. No. [redacted]

MAURICE A. WHEELER,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO COURT OF APPEALS
FOR THE THIRD CIRCUIT.

PETITION FOR REHEARING UNDER RULE 58.

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INDEX

	PAGE
Petition for Rehearing Under Rule 58	1

CASE CITED

Smith v. United States, 348 U. S. 147, 150-151	2, 3

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1958. No. 336.

MAURICE A. WHEELER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING UNDER RULE 58.

TO THE HONORABLE, THE JUSTICES OF THE SAID COURT:

The petition of petitioner respectfully represents:

1. On October 27, 1958, this Court denied petitioner's petition for writ of certiorari to the United States Court of Appeals for the Third Circuit.

2. The petitioner in his original petition for a writ of certiorari is of the opinion and belief that he has not treated with sufficient clarity that part of the opinion of the Court of Appeals for the Third Circuit which violates his consti-

tutional rights to a fair and impartial trial which is to take place consistent with the said opinion.

3. It is petitioner's contention that due to the mandate as outlined in the opinion of the Court of Appeals for the Third Circuit, the trial court Judge would be precluded from exercising his proper judicial functions concerning the admissibility of any evidence which treats with the motions for suppression of evidence in this case, in that he would be bound to overrule any objections raised by petitioner to the admissibility of such evidence during the course of the trial; and he would be precluded from submitting the question of misrepresentation fraud and deceit to the Jury. (*Smith v. United States*, 348 U. S. 147, 150-151).

4. The petitioner refers the Honorable Court's attention to that portion of the opinion of the Court of Appeals for the Third Circuit which reads as follows:

> "It is true that some different witnesses testified before Judge Gourley than were heard by Judge Miller, but from an attentive perusal of the transcripts we fail to perceive that the substance of their testimony bearing on the motions to suppress the evidence and dismiss the indictment was any different. Therefore, though it was a proper exercise of discretion to take the new testimony, the decision on what was substantially the same testimony was nothing more than a review of Judge Miller's earlier decision and was an abuse of discretion" (Page 35 of Petition for Writ of Certiorari).

5. The petitioner contends that the language above creates a mandate to the trial Judge directing him to admit over any objections the alleged evidence of misrepresentation, fraud and deceit practiced by the government agents. Further, this deprives the trial Judge from any judi-

consideration of such evidence despite the fact that in the original motion to suppress Judge Miller (whom the said Court of Appeals determined was more correct in his opinion than Judge Gourley), stated in his denial of the motion to suppress that he was doing so without prejudice to petitioner's right to object at the trial to the admission of evidence obtained from his records.

6. In light and in view of the obvious results of said opinion of the said Court of Appeals, the petitioner would be compelled to stand trial with prejudice as to objections to admissibility of alleged illegal evidence and would be deprived of having the Jury determine the question of trickery and fraud as to such evidence.

It would, therefore, be impossible for petitioner to receive a fair and impartial jury trial without prejudice to his constitutional rights. (*Smith v. U. S.*, supra.)

WHEREFORE, petitioner prays that this Court grant a rehearing and oral argument in this case.

Respectfully submitted,

By: ROBERT M. TAYLOR,
ALEXANDER COOPER,
Attorneys for Petitioner.

CERTIFICATE.

The foregoing petition for rehearing is believed to be meritorious and is presented in good faith and not for delay and confines itself to substantial grounds available to petitioner although not previously presented.